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[Proposed] Attorneys for Chapter 7 Trustee,  
Wesley H. Avery

**FILED & ENTERED**

**APR 18 2018**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bakchell DEPUTY CLERK

**CHANGES MADE BY COURT**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re

MARVIN ABEL SICAN ROCA, ANGELICA  
MARIA RODRIGUEZ, individuals,

Debtors.

TAX ID #s XXX-XX-9028, XXX-XX-5376

WESLEY H. AVERY, Chapter 7 Trustee of  
the Bankruptcy Estate of MARVIN ABEL  
SICAN ROCA, ANGELICA MARIA  
RODRIGUEZ, individuals,

Plaintiff,

v.

MARVIN ABEL SICAN ROCA a.k.a.  
MARVIN A. SICAN, an individual;  
ANGELICA MARIA RODRIGUEZ, an  
individual; OSCAR L. SICAN, an individual;  
ANGELICA SICAN MARTINEZ, an  
individual; BAYVIEW LOAN SERVICING,  
LLC, a Delaware limited liability company;  
and DOES 1-20.

Defendants.

Case No. 2:17-bk-24369-RK  
(Honorable Robert N. Kwan)

Adv. No. 2:18-ap-01047-RK

Chapter 7

**ORDER ON DEFENDANTS MARVIN  
ABEL SICAN ROCA A.K.A. MARVIN A.  
SICAN'S, ANGELICA MARIA  
RODRIGUEZ'S, OSCAR L. SICAN'S,  
ANGELICA SICAN MARTINEZ'S  
MOTION FOR ORDER DISMISSING  
ADVERSARY PROCEEDING FOR  
FAILURE TO STATE A CLAIM ON  
WHICH RELIEF CAN BE GRANTED**

Date: April 17, 2018  
Time: 3:00 p.m.  
Place: U.S. Bankruptcy Court  
Courtroom 1675  
255 E. Temple Street  
Los Angeles, CA 9001

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1 The hearing on defendants Marvin Abel Sican Roca a.k.a. Marvin A. Sican's, Angelica  
2 Maria Rodriguez's, Oscar L. Sican's, Angelica Sican Martinez's Motion for Order Dismissing  
3 Adversary Proceeding for Failure to State a Claim on Which Relief Can Be Granted (Doc. # 13)  
4 was held on April 17, 2018 at 3:00 p.m., before the Honorable Robert N. Kwan, United States  
5 Bankruptcy Judge.

6 Plaintiff Wesley H. Avery, Chapter 7 Trustee ("the Trustee"), appeared by his counsel Zi  
7 C. Lin. Defendants Marvin Abel Sican Roca a.k.a. Marvin A. Sican, Angelica Maria Rodriguez,  
8 Oscar L. Sican, and Angelica Sican Martinez appeared by their counsel Daniel King. There were  
9 no other appearances.

10 The parties submitted to the Court's tentative ruling to grant the motion to dismiss, with  
11 leave to amend. Based upon the reasons for the court's rulings stated on the record at the hearing  
12 and in its tentative ruling issued before the hearing (copy attached thereto), IT IS HEREBY  
13 ORDERED:

14 1. The motion to dismiss is granted, and the complaint is dismissed with leave to  
15 amend;

16 2. The Trustee is granted 21 days leave of court from the date of entry of this order to  
17 serve an amended complaint;

18 3. The April 24, 2018 status conference in this case is vacated, and the status  
19 conference is continued to June 26, 2018 at 1:30 p.m.; and

20 4. A joint status report is due on June 19, 2018 if defendants serve an answer to the  
21 amended complaint. A joint status report is not required if defendants serve and file a motion to  
22 dismiss the amended complaint.

23  
24 Date: April 18, 2018



Robert Kwan  
United States Bankruptcy Judge

ATTACHMENT – TENTATIVE RULING

Grant defendants' motion to dismiss the adversary complaint for failure to state a claim upon which relief can be granted, but with leave to amend. The court agrees with defendants that the complaint does not adequately plead plausible claims. To the extent that plaintiff is relying upon a claim of the Internal Revenue Service for income taxes to fall within the 10-year statute of limitations for collection of taxes under 26 U.S.C. 6502(a)(1), plaintiff must allege a plausible claim that there was a tax liability owed by debtors at the time of the transfer and that the collection statute of limitation was still open at the time that this action was brought. However, in this case, since the alleged IRS tax liability of debtors is unassessed, plaintiff must plausibly allege that the statute of limitations for assessment of additional taxes against debtors under 26 U.S.C. 6501 is still open, so the tax is still assessable, which deadline is generally three years from the due date of the return, on or about 4/15/09, for calendar year 2008 since it appears that the return was filed before the due date, which deadline appears to have been or about 4/15/12. The assessment statute of limitations may be longer than three years for a substantial omission of income or for fraud or evasion of tax under 26 U.S.C. 6501. If the IRS has not made an assessment of additional taxes within the statute of limitations on assessment, it cannot bring any action to collect tax. The complaint does not address this issue, only stating that the 10-year collection statute of limitations has not expired on information and belief.

The complaint alleges that on information and belief, the IRS will file a proof of claim in this case. However, as of 4/16/18, it has not done so, though the deadline for governmental claims is 5/21/18. If the IRS does not file a proof of claim, does this mean that plaintiff cannot rely on the IRS's standing to bring a fraudulent transfer action?

The allegations of the complaint are unclear about plaintiff's theory of tax liability based on unreported rental income, i.e., is plaintiff alleging that the property is owned by debtors despite the transfer of legal title, and if this is so, it is not clear. See *In re Cass*, 606 Fed. Appx. 318 (9th Cir. 2015)(creditor's judgment lien arising after fraudulent transfer of property attached to debtor's equitable interest in property since title transfer was a sham and debtor retained control and dominion over property). If the property was transferred to debtor's brother, and it is his now, then any rental income from the property would be attributable to him rather than debtor. The allegations in the complaint only assert that the transfer of the property by debtor husband to his brother was fraudulent because it was made for no consideration while debtors were insolvent, but not that debtors retained an equitable interest in the property.

If plaintiff asserts that debtors retained an equitable interest in the property despite transfer of legal title, it would seem that plaintiff does not need to rely on the IRS collection statute of limitations to assert a fraudulent transfer claim because such equitable interest would be property of this bankruptcy estate. *In re Cass*, *supra*.

1 The court agrees with defendants that the eleventh cause of action for denial of  
2 discharge fails to state a claim upon which relief can be granted. First, the cause of  
3 action contains two separate claims, one under 11 U.S.C. 727(a)(3), and one under 11  
4 U.S.C. 727(a)(4). The claims are not adequately pleaded because there is no pleading of  
5 facts to support the elements of a claim under either statute.

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Appearances are required on 4/17/18, but counsel may appear by telephone.